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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,769	07/13/2001	Laurence Sebillotte-Arnaud	210356US0	1466
22850	7590	02/18/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			MRUK, BRIAN P	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/903,769

Applicant(s)

SEBILLOTTE-ARNAUD ET AL.

Examiner

Brian P Mruk

Art Unit

1751

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-4, 6-16 and 21-29.Claim(s) withdrawn from consideration: 17-20.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

Brian P. Mruk  
BRIAN P. MRUK  
PRIMARY EXAMINER  
TECH CENTER 1700

### **ADVISORY ACTION ATTACHMENT**

Applicant continues to argue that it is not clear if the silica in Example 7 of Uemura et al is hydrophobic or non-hydrophobic. Specifically, applicant alleges that since Uemura does not expressly state that their silica has been modified so as to be hydrophobic, that it does not necessarily follow that such silica is hydrophobic. However, the examiner respectfully asserts that the examiner addressed this issue in the previous Office actions. Specifically, the examiner asserted in Paper No. 8, Paragraph No. 6 and that the silica component in Example 7 would inherently meet the silica property requirements (i.e. hydrophobic, etc.) of the instant invention, absent a showing otherwise. Thus, the examiner asserts that the burden is with applicant to show that the silica is non-hydrophobic. Since applicant's speculation that the silica in Example 7 is not generally hydrophobic is not a proper showing, the examiner asserts that applicant has not met the burden of showing that the silica is non-hydrophobic. The examiner has considered the two cited patents that disclose that silica may be modified to become hydrophobic. However, the examiner maintains that applicant has not provided any showing that the specific silica used in Example 7 of Uemura is not hydrophobic. Thus, the examiner maintains that the silica used in Example 7 of Uemura is hydrophobic, absent a showing otherwise. Applicant further argues that Uemura et al does not teach a foaming surfactant in Example 7. However, the examiner respectfully asserts that the polyoxyethylene hydrogenated castor oil 40 EO adduct component and

Art Unit: 1751

the 1-hexyl-3-undecamethylhexasiloxane propynyl glycerol component in Example 7 are nonionic foaming surfactants, and thus meet the requirements of the instant invention.

Applicant continues to argue that Glenn, Jr. et al, WO 96/28140, and Glenn, Jr. et al, U.S. Patent No. 6,277,797, do not teach the claimed oxyalkylenated thickening agents required in the instant invention. However, the examiner asserts that both of the "Glenn" references do indeed teach this limitation. Specifically, both "Glenn" references teach the inclusion of polyethylene glycol (see page 17 of WO 96/28140 and cols. 12-13 of US 6,277,797), which is a preferred oxyalkylenated thickening agent of the instant invention. Although the "Glenn" references do not describe the polyethylene glycol components as thickening agents, the examiner asserts that polyethylene glycol is traditionally used in cleansing compositions as surfactants, humectants, solutes, thickening agents, etc. Thus, the examiner asserts that the teaching of the polyethylene glycol component in the "Glenn" references meets the oxyalkylenated thickening agent requirement of the instant invention.